

Fiscal Note

Fiscal Services Division



HF 2424 – County Attorney Duties (LSB 1599HZ)

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Fiscal Note Version – New

Description

House File 2424 eliminates the Department of Human Services (DHS) as a party in a juvenile proceeding for Child in Need of Assistance (CINA) cases, Termination of Parental Rights (TPR), and voluntary foster care placements. The Bill strikes the provisions that require county attorneys to represent the DHS in these proceedings. The Bill eliminates provisions that permit the DHS to request the Attorney General's Office to provide counsel for these juvenile proceedings. The Bill provides that Juvenile Court Officers or the DHS may file certain petitions and may request assistance from the Attorney General's Office, if the county attorney declines to file the petition. The Bill defines "State" for the purposes of these juvenile proceedings to be the general interest held by the people in the health, safety, welfare, and protection of all children living in the State.

Background

1. Under current law, the DHS is a party in CINA and TPR proceedings, and voluntary foster care placements. The DHS can request assistance from the Attorney General's Office in these juvenile matters. The county attorneys may not request such assistance.
2. Based on data provided by the Attorney General's Office, the Office has handled approximately 11 cases annually from 1990 through 2011. There is one Assistant Attorney General that handles these cases on a part-time basis.
3. Under current law, if county attorneys have ethical conflicts, outside counsel may be hired at the county's expense, the case may be referred to a county attorney from a contiguous county, or assistance may be requested from the Attorney General's Office.
4. Under current law, county attorneys may request assistance from the Attorney General's Office in a criminal case, and the Office may accept or deny the request.
5. In *In re A.W.*, 741, N.W.2d 793, 803 (Iowa 2007) the Iowa Supreme Court ruled that county attorneys have a statutory duty to represent the interests of the State in juvenile court and the State appears through the DHS. This Bill redefines "State" and strikes the DHS as a party. The impact of the Iowa Supreme Court ruling is debatable. There are differences of opinion between the Office of the Attorney General and the Iowa County Attorneys Association regarding the potential conflicts that may or may not be the result of the Iowa Supreme Court ruling.
6. Based on data from 90 of Iowa's 99 counties, the FY 2012 estimate for the legal services impacted by the Bill is approximately \$7.8 million. Under current law, the counties will pay approximately \$5.2 million and the federal match is \$2.6 million.
7. On an annual basis, the DHS is involved in approximately 5,000 unduplicated CINA and TPR cases. The Iowa County Attorneys Association indicates it will continue to advise the DHS staff in these cases, but the DHS will no longer be a party.

8. In FY 2011, the DHS received \$26.9 million in federal funds for services impacted by this Bill.
9. The Office of the Attorney General handles all appeals for the State.

Assumptions

1. The DHS will seek representation from the Attorney General's Office more often under the provisions of this Bill. Alternatively, the DHS may choose to hire its own attorneys (in-house counsel), or hire private attorneys (outside counsel) for legal representation in all cases where it has custody of the child.
2. This Bill will shift certain juvenile cases from the county attorneys to the Office of the Attorney General or DHS in-house counsel or outside counsel.
3. The Attorney General's Office will need additional resources for staff.
4. The Bill strengthens the ability of Juvenile Court Officers to request CINA petitions. This may result in more CINA cases than under current law.
5. The impact on the appellate process cannot be determined.

Fiscal Impact

The fiscal impact cannot be estimated but is anticipated to be significant. If county attorneys no longer represent the DHS, counties may no longer be eligible for the \$2.6 million federal match. If the DHS hires in-house or outside counsel, or requests assistance from the Attorney General's Office, it is likely the \$2.6 million federal match will not be sufficient to fund all legal costs.

The impact on the DHS Child and Family Services budget, potential increase in CINA cases, and potential loss of federal foster care funds cannot be estimated but may be significant.

Sources

Iowa County Attorneys Association
Department of Human Services
Attorney General's Office

/s/ Holly M. Lyons

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the correctional and minority impact statements were prepared pursuant to Iowa Code [section 2.56](#). Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
